



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

MAR 02 2016

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED and Via Email
Article Number: 7015 3010 0001 6837 5469

Dr. Virginia Fichera
13955 Martville Rd.
Sterling, NY 13156

Re: Clean Water Act Concerns at and around 13181 Martville Road,
Martville, New York

Dear Dr. Fichera:

This matter was referred to the Office of Regional Counsel to review and respond to your February 22, 2016 email to the Environmental Protection Agency, Region 2 (EPA). This letter seeks to further explain to you EPA's statutory authorities and the actions taken by our office to date with regard to your July 23, 2015 complaint indicating possible violations of the Clean Water Act's (CWA) stormwater and wetland protection provisions at and/or adjacent to 13181 Martville Road, Martville, New York (the Property). The Property is owned by Christopher J. Construction, LLC (Owner) who has proposed to use it for a sand and gravel mining operation.

I. Clean Water Act

Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States except as in compliance with Sections 301, 306, 307, 318, 402 and 404 of the Clean Water Act.

A. Stormwater Statutory Authority & Inspection

Section 402(a) establishes a system for the issuance of National Pollutant Discharge Elimination System (NPDES) permits for discharges of pollutants from point sources to waters of the United States. Section 402(b) allows each state to implement the CWA through its own permit program, so long as the program is approved by EPA as conforming to federal guidelines. While states with approved programs exercise primary implementation authority, EPA retains authority to address any violation of the CWA occurring in an authorized state pursuant to Sections 309(a) and 402(i) of the CWA, 33 U.S.C. §§ 1319(a) and 1342(i).

The New York State Department of Environmental Conservation (NYSDEC) is the agency EPA has granted authority to administer the NPDES program in New York. Under this authority, a NYSDEC-issued State Pollutant Discharge Elimination System (SPDES) permit is required for the discharge of pollutants from a point source to waters of the United States. "Point source" is

defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. NYSDEC has promulgated a Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP).

As you are aware, on August 21, 2015, EPA performed an industrial stormwater Compliance Evaluation Inspection (CEI) at the Property to evaluate, among other things, the potential for stormwater discharges from the Property. Attached please find a copy of the CEI report that was initially transmitted to the Property Owner on September 18, 2015, and shared with you on February 16th. Attachment 1, CEI. The CEI noted the requirement for MSGP coverage prior to the commencement of industrial activity including construction activity resulting in one or more acres of soil disturbance, which had not been evidenced at the Property at the time of the CEI. The CEI further noted that there was no point source discharge. It is our practice to send copies of our inspection reports to inspected facilities so that they can address our findings.

Also attached is the Letter of Acknowledgement from the NYSDEC confirming receipt of the Notice of Intent submitted by the Property management, seeking coverage under the SPDES MSGP, that was received by the NYSDEC on October 8, 2015. Attachment 2.

So long as the permittee complies with the provisions of this MSGP, there is no basis for further action pursuant to the stormwater protection provisions of the CWA.

B. Wetlands Authority and Inspection

Section 404 of the Act establishes a permitting program whereby a person seeking to discharge dredged or fill material into waters of the United States, including wetlands, may apply for a permit from the United States Army Corps of Engineers (the Corps) to do so. 33 U.S.C. § 1344. EPA and the Corps share Section 404 enforcement authority.

As the permitting agency for Section 404, the Corps reviewed the application for the proposed mine, and on October 28, 2015, issued a finding that no Section 404 permit is required. Attachment 3. In addition, EPA used remote imagery to evaluate the vicinity of the proposed mine with respect to your assertions that earthen material has eroded from the Property and resulted in a discharge of fill material into surrounding wetlands downslope of the Property. EPA determined that no visible evidence of such fill discharge exists. Attachment 4.

Absent a discharge of dredged or fill material into waters of the United States, there is no basis for further action pursuant to the wetland protection provisions under the CWA.

Our mission is to protect the environment by enforcing environmental laws, and we appreciate receiving complaints by concerned citizens such as yourself. This letter concludes our response to your July 23, 2015 complaint.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Fischer', with a stylized flourish at the end.

Lauren Fischer
Assistant Regional Counsel